

REMARKS

At the outset, Applicants thank the Examiner for allowing a telephonic interview on October 26, 2009.

In the Office Action, the Examiner rejected claims 1-5, 7-15, and 20-37 under 35 U.S.C. 103(a) as being unpatentable over Rosen; rejected claims 29-31 under 35 U.S.C. § 101 as non-statutory subject matter; rejected claims 32-34 under 35 U.S.C. § 112 as a single means claim; and rejected claims 35-37 under 35 U.S.C. § 112, second paragraph, for indefiniteness. Applicants confirmed with Examiner Wilson that the Office Action is indeed non-final as indicated by PAIR.

By this amendment, Applicants amend claims 1, 2, 3, 14, 15, 20, 24, 25, 26, 27, 28, 29, 32, and 35 to more clearly define the features of those claims. Applicants submit that the amendments are supported by the specification.

Regarding the rejection under 35 U.S.C. § 101, Applicants submit that the amendment to claim 29 obviates the basis of the rejection of claim 29 as well as claims 30-31 by reason of their dependency from claim 29.

Regarding the rejection under 35 U.S.C. § 112, although Applicants disagree with the Examiner's position regarding "single means," Applicants have amended independent claim 32.¹ Thus, the rejection under 35 U.S.C. § 112 of claim 32 as well as claims 33 and 34, at least by reason of their dependency, should be withdrawn.

¹ Since 1994, the Federal Circuit's law has held that both courts and the PTO must limit the scope of a means-plus-function limitation to the corresponding structure disclosed in the specification. *In re Donaldson Co., Inc.*, 16 F.3d 1189, 1193 & 1195, 29 USPQ2d 1845 (Fed. Cir. 1994) (*en banc*). Hence, the rationale of *Hyatt* that a single-means claims is unpatentable because it claims "every conceivable means for achieving the stated result" is no longer correct, at least in view of *Donaldson*.

Regarding the rejection under 35 U.S.C. § 112, second paragraph, Applicants submit that the amendments to claim 35 obviate the rejection of claim 35 as well as claims 36 and 37 at least by reason of their dependency.

The Examiner rejected claims 1-5, 7-15, and 20-37 under 35 U.S.C. 103(a) as being unpatentable over Rosen. Applicants respectfully traverse this rejection.

Claim 1 recites a combination including, for example, the following features:

including, in a message, floor status information of a data communication media in relation to a party of a communication session, the message configured as at least one of an offer and an answer of a session description protocol associated with a session initiation, the floor status information configured as a value representing at least one of a floor granted, a floor taken, and a port number; and

sending the message from a communication system to a user equipment.

In contrast to claim 1, Rosen describes a transmission privilege that generally allows a single user to transmit information to other net members at a given time.

Rosen, column 3, lines 57-59. The transmission privilege is granted or denied to a requesting net member, depending on whether or not the transmission privilege is currently assigned to another net member when the request is received. Rosen, column 3, lines 59-63. However, rather than use the session establishment mechanisms already in place, Rosen uses separate channels (e.g., the NBS media signaling channel 212). As such, Rosen is ***clearly not using a session description protocol associated with session initiation*** but rather protocols after the initial session offer and acceptance, such as an NBS media signaling channel 212 to communicate floor control requests. Rosen, col. 6, lines 59-Col. 7, line 22. Indeed, Rosen's FIG. 2 (reproduced below) confirms that session establishment is via a SIP

channel 210 and that Rosen's floor control request is sent via a separate NBS channel 212.

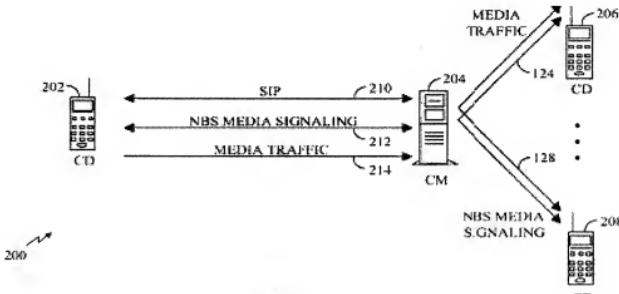


FIG. 2

Rather than communicate floor control information within the same mechanisms used to set up the session, Rosen teaches away by using a separate mechanism, e.g., NBS media signaling 212. As such, Rosen fails to disclose "including, in a message, floor status information of a data communication media in relation to a party of a communication session, the message configured as at least one of an offer and an answer of a session description protocol associated with a session initiation, the floor status information configured as a value representing at least one of a floor granted, a floor taken, and a port number." Moreover, the Examiner's taking of Official Notice (with respect to the use of session data protocol) does not cure this noted deficiency. Therefore, claim 1 and claims 2-5 and 7-13 at least by reason of their dependency from claim 1, are allowable over Rosen, and the rejection of those claims under 35 U.S.C. 103(a) should be withdrawn.

Moreover, nowhere does Rosen disclose that the message including the floor status information is "configured as a value representing at least one of a floor granted,

a floor taken, and a port number." For this additional reason, claim 1 and claims 2-5 and 7-13 at least by reason of their dependency from claim 1, are allowable over Rosen, and the rejection of those claims under 35 U.S.C. 103(a) should be withdrawn.

Claim 2 recites that the floor status information includes "at least one fixed value representing the at least one of the floor granted and the floor taken." And, claim 3 recites that the message of claim 1 is sent "as a session initiation protocol OK message." Nowhere does Rosen disclose the noted features of amended claims 2 and 3. For these additional reasons, claims 2 and 3 are allowable over Rosen, and the rejection of those claims under 35 U.S.C. 103(a) should be withdrawn.

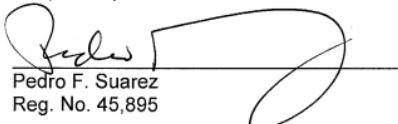
Independent claims 14, 15, 20, 24, 26-29, 32, and 35, although of different scope, include features similar to some of those noted above with respect to claim 1. For at least the reasons given above, the rejection under 35 U.S.C. § 103(a) of claims 14, 15, 20, 24, 26-29, 32, and 35, as well as claims 21-23, 25, 30, 31, 33, 34, and 36-37, at least by reason of their dependency, should be withdrawn.

CONCLUSION

On the basis of the foregoing amendments, the pending claims are in condition for allowance. It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper.

No additional fees are believed to be due, however the Commissioner is authorized to charge any additional fees or credit overpayments to Deposit Account No. 50-0311, reference No. 39700-615001US. If there are any questions regarding this reply, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Respectfully submitted,



Pedro F. Suarez
Reg. No. 45,895

Date: 27 October 2009

Address all written correspondence to
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
3580 Carmel Mountain Road, Ste 300
San Diego, CA 92130
Customer No. 64046
Phone: 858.314-1540 Fax: 858.314.1501